

January 17, 2012

Via Electronic Mail
Citizens Redistricting Commission
901 P Street, Suite 154-A
Sacramento, CA 95814

RE: Recommendations for Statutory Change to Improve the Redistricting Process

Dear Members of the Citizens Redistricting Commission:

We appreciate the opportunity to present our thoughts on how to improve the redistricting process. We are a group of organizations who have been monitoring and participating in this process closely – since it officially began in 2009 with the Bureau of State Audits developing regulations for the Commissioner application and selection process; continuing with the actual application and selection process in 2010; continuing with the setting up of the Commission with the assistance of the Secretary of State's office; then, finally, with the seated Commissioners conducting their mapping work in 2011.

We want to communicate that we think that the Commission took its responsibilities and the enormous task it was responsible for seriously and with care. We feel that, on the whole, the process was successful at being more transparent and inclusive. We also acknowledge that the process wasn't perfect, and at times was a work in progress. (This is one of the hazards of being the "first.") As you know, many of us, plus others, commented and offered suggestions to you (as well as to the BSA and to the Secretary of State's office) on improving the process in real-time. We thank you for receiving those suggestions in the spirit in which they were given, and for being open to improving the process as you went along.

Our intention here is to focus on improvements that would require statutory changes, both improvements that were generated from our internal discussions and, as appropriate, responding to the questions you have posed. We also expect in the future to pass on to you suggestions for future redistricting commissions that do not require statutory change.

Following are our recommendations:

I. Start earlier.

The current statutory language in Government Code § 8252 sets deadlines by when the selection process (and certain intermediary steps) must be completed and the Commission must be seated. The Constitution sets the deadline for when the final maps must be approved by the Commission. Given the need for time to set up, learn about the process, and perform the tremendous amount of work associated with actually holding hearings and drawing maps, we strongly support starting both the selection process and the Commission's work earlier. This

may be achieved by adjusting the deadlines earlier as a statutory amendment, or changed through regulation and practice by moving the process earlier.

Specific recommendation: Keep the CRC selection process one year long, but start it 4.5 months earlier and adjust all statutory dates related to the selection process to be 4.5 months earlier. The start date would become August 16 of each year ending in the number nine (Government Code § 8252(a)(1)). The date by which the CRC should be chosen should be adjusted to August 15 of each year ending in the number zero (§ 8252(g)), in order to give the commission a full year before the deadline to adopt maps on August 15 of each year ending in the number one.

We note that the Constitution also sets a date by which the Commission must be created – no later than December 31, 2010 and every ten years thereafter (Article XXI, Sec. 2 (a)). The Constitutional language allows the Commission to be created earlier than December 31, and thus, does not need to be changed. However, the Commission may choose to clarify with additional statutory language that the Commission may begin its work as early as August 16 of the year ending in zero.

As a concrete example, we use the 2020 redistricting cycle in the following related recommendations:

- August 16, 2019 – August 15, 2020: During this time, carry out the selection process, and also have BSA staff work to set up the office, computers, phone lines, and email accounts to allow the Commission to step into relatively turn-key operation from Day 1.
- August 16, 2020 – December 31, 2020: Citizen Redistricting Commission begins setting up and preparing for hearings and map drawing. During this time, the CRC can recruit and hire staff and consultants; set up the office and website; select a chair and vice-chair; receive trainings; create the outreach/education plan; and gather data necessary to begin racial polarized voting analysis.
- January 01, 2021 – March 31, 2021: Before the Census 2020 data has been released, the CRC and staff can conduct public education about the redistricting process and hold initial public input hearings around the state to collect community and other helpful data before new Census data is released.
- April 2021 – August 2021: After the relevant Census data is released sometime in March '21, the mapping team will begin to prepare Census data, mesh with other data. The racial polarized voting analysis should be carried out. The CRC should host input sessions with groups presenting statewide maps. The CRC should use the input to release draft maps between June and August 2021.
- Final Maps approval deadline: August 15, 2021.

II. The BSA should carry out a robust outreach program to reach out to and encourage a strong applicant pool.

- Government Code § 8252(a)(1) should explicitly mandate that the application process include outreach to potential Commission applicants by the Bureau of State Audits, as well as the Commission's outreach to the public regarding mapping. (Our recommendations re: the Commission's outreach are discussed below). As we stated in our recommendations regarding timing, we think outreach for the application process should begin no later than August 16 of each year ending in the number nine, a full year before the Commission is seated. In addition, we think the statute should state that outreach to potential applicants should include information about the redistricting process, the responsibilities of serving as a Commissioner, and complete information on the application and selection process.
- We believe the explicit requirement that the BSA conduct outreach to potential applicants is critical to ensure that a diverse group of qualified applicants pursue Commission positions. A robust outreach campaign to applicants will continue to be important, even if there is more general public knowledge of the Commission in the future. In future years it might be more difficult to get applicants, as the required time commitment is made clear, and for some, perhaps the special attraction of being the "first" Commission will be gone.
- It will continue to be important to do targeted outreach to underrepresented communities to ensure the diversity of the Commission. As the BSA proceeds with its outreach activities, it should work closely with organizations that have experience and expertise with public education initiatives in underrepresented communities. In this connection, we would note that the California Constitution and the sections of the Government Code that govern the redistricting process make several references to the need for diversity in the selection process and the Commission itself. Article XXI, Section 2(c)(1) of the California Constitution states that the selection process must be designed to produce a Commission that is "reasonably representative of this State's diversity." In Government Code § 8252(a)(1) the BSA must initiate an application process that promotes a "diverse and qualified applicant pool." As noted in our letter below, we also support retaining the language in § 8252(g) of the Government Code that requires the final six Commission appointees to be chosen in a manner that ensures the Commission reflects the diversity of California. We would note that in this redistricting, the BSA did attempt to conduct some outreach targeting underrepresented communities, but experienced challenges because of lack of funds, and much of that outreach was underwritten by private funds. Next time, the Commission should ensure that funding is provided for in its budget.

III. Clarify the scope of the Commission's "outreach" program to solicit public participation in the redistricting public review process.

- We recommend that § 8253(a)(7) be amended to explicitly state that the "outreach program" should include public education about the redistricting process and the criteria for the Commission's maps. This will promote more robust public participation, and will help ensure that members of the public provide input that is relevant and useful for the

Commission's line-drawing process. In addition, we believe that lack of education about the California Constitution's criteria for the maps contributed to misinformed, and at times, hostile public comments at Commission hearings regarding the need to consider the impact of the maps on California's underrepresented communities.

- In addition, as is the case with the BSA's outreach to potential applicants, we recommend that the Commission's outreach program should promote participation by members of California's underrepresented communities, and that the Commission should work closely with organizations that have experience and expertise with public education initiatives in those communities. This outreach should begin as early as necessary to ensure the implementation of an effective program.

IV. Create a smoother transition from BSA to Commission.

Currently, Government Code § 8253(a)(5) requires the Bureau of State Audits to carry out the selection process of the CRC and then transfer responsibility for set up to the Secretary of State. In order to increase efficiency and minimize information and momentum lost through multiple transfers, we recommend amending that statutory language to require the Bureau of State Audits to carry out the selection process and the transitional set-up process. We also recommend that the BSA be allocated appropriate funds to carry out this function.

V. Increase the Commission budget.

Base budget, § 8253.6(a): A successful independent redistricting commission process depends on the availability of sufficient resources for outreach to the public, the commissioner selection process, set up of commission infrastructure and staffing, and the redistricting process itself.

- The **actual** cost of the 2011 redistricting process (FYs 2009-2010 through 2011-2012) should be used as the base figure from which funds for the 2021 process are calculated, with adjustment by the Consumer Price Index (as the statute already provides) and taking into account any additional adjustments needed such as for regulatory expenses that will not be repeated in the 2021 cycle.
- We understand that the actual amount spent this cycle by the Bureau of State Audits, the Secretary of State, and the Commission was approximately \$6 million. The Commission should be guided by more precise data about the amount and how it was allocated, to be supplied by the staff.
- The \$3 million figure in the statute was a Legislative Analyst's Office estimate of the cost of the 2001 redistricting process, and it is recognized that estimating the amount spent in a legislative process is by its nature difficult. In addition, the new independent redistricting process is so different from the previous one that it was not possible to effectively estimate its real cost, especially considering the need for expanded outreach, education, communication and public participation.

- If the Legislative Analyst's estimate of 2001 costs had been adjusted to reflect the Consumer Price Index increase, the 2011 cycle would have had a budget of approximately \$4 million.

Transfer of responsibility for ready public access to data and software, Government Code § 8253(b): The Commission has asked whether § 8253(b) should be amended to transfer responsibility from the Legislature to the CRC for providing the public ready access to redistricting data and computer software for drawing maps. We believe that the statute should continue to indicate that compilation and maintenance of the statewide database is the responsibility of the Legislature. However, we agree that it is appropriate for the Commission to provide the public ready access to redistricting data and computer software for drawing maps, and the first sentence of § 8253(b) should be revised to reflect that division of responsibility. This is consistent with our recommendation regarding the Commission's responsibility to conduct public education about the redistricting process and mapping criteria. We mention this in conjunction with the Commission's budget because if that transfer of responsibility is made, it is essential that sufficient funds be made available to the Commission for the purpose.

Budget for litigation: Article XXI, Section 3(a) of the state Constitution requires the legislature to provide funding for defense against any court action regarding the maps. The commission must have certainty that the funds will be available when needed, even when the legislature is not in session. We support a statutory amendment to require a revolving litigation fund from which the commission can draw, with oversight and review by the Department of Finance.

VI. Strengthen the hiring process.

Transparency and conflicts of interest, Government Code § 8253(a)(5): The question has been raised whether the public should have greater access to information about the process of hiring staff and engaging legal counsel and consultants. A certain level of transparency in hiring is important to give the public trust in the conduct of the process. It is also important to encourage large, diverse pools of applicants for these positions. If commissioners are selected and begin their work several months earlier, it will be possible to give the public some input into the types of qualifications or skill sets the Commission should be looking for in staffers and to publicize job announcements in an open and effective way. We recognize the need for a certain amount of Commission flexibility and discretion in hiring to prevent highly-qualified individuals from being deterred from applying for employment.

In applying standard state contracting processes for Voting Rights Act counsel and mapping and Racial Polarized Voting consultants, the Commission ensured the disclosure of relationships that could have had a bearing on potential bias of the consultants. We recommend that this practice be continued and applied to all consultants and contractors.

For both staff and contractors, we believe it would not be appropriate to amend “to the extent applicable” in the third sentence of § 8253(a)(5). That provision is needed in order for the commission to have the flexibility to tailor their processes so that well-qualified persons are not unduly eliminated from hiring pools.

Authority in contracting, §8253.6(b): The CRC asks whether the commission should have delegated authority for procurement and contracting. The extremely cumbersome state procurement processes hindered efficient set-up and management of the commission, and we urge that this problem be addressed. At the present time we do not have sufficient information to suggest details as to specific changes that should be made.

VII. The next Commission should ensure that its deliberations and decisions are fully transparent to the public and make the process of public participation “user-friendly.”

In ten years, technology will change dramatically. Meetings may look different. Members of the public (and the commissioners) may be able to participate effectively in a more “virtual” environment. It’s difficult for us to predict the possibilities – but, in any case, we want to point out the following issues:

- Members of the public need to know, with adequate notice, what the Commission will be discussing and when. The posted agendas should be as detailed as possible and should match the actual meeting proceedings. In addition, the documents and background that will inform the discussion should also be made available prior to the meeting.
- The public needs to know what happened in meetings after they happen. Video and transcripts of meetings need to be published within days, not weeks. These records should be both searchable online and downloadable for offline viewing. In addition, all public testimony, no matter what form it comes in, should be displayed on the website in an organized and searchable format. Formal minutes of CRC votes are needed to memorialize the actions taken. As with other records of CRC proceedings, these minutes need to be on-line and searchable.
- Providing testimony to the Commission should be an easy and pleasant experience, and the access to the commission meetings (e.g., meeting hours) should be consistent across communities.

VIII. The next Commission should ensure that the public has an adequate opportunity to comment.

We recommend that Government Code § 8253(a)(7) be amended to ensure both that the public has an adequate opportunity to comment and that the Commission has sufficient time and flexibility to complete its map-drawing responsibilities.

All of our organizations agree that it is incredibly important for the Commission to release a statewide map that shows how all of the districts fit together and reflects the Commission’s best

efforts to comply with all of the Constitutional criteria, and that it build in adequate time and opportunity for the public to review and provide feedback to this statewide map. This map should be released with the data and in a format necessary to allow for full analysis by the public.

At times, the Commission may still choose to carry out a visualization process (that is, drawing draft maps region by region) to complement the release of and receipt of public comments for the statewide maps. However, the Commission should also ensure that there is adequate time for the public to comment on the visualizations.

We further believe that the time pressure faced by the Commission constrained the Commission's ability to release a second draft map, and that changes to timing requirements set forth in the Voters First Act would alleviate time pressures faced by future commissions and facilitate additional opportunities for input such as the posting of multiple statewide draft maps. Our first recommendation of starting earlier will do much to deal with these pressures and give future commissions more time on the "front end." Additionally, we recommend the following changes to Government Code § 8253(a)(7):

- Make clear that prior to adopting a final map, the Commission must release at least one set of statewide draft maps that reflects its best efforts to comply with the requirements of the Voters First Act and is subject to the requisite 14-day public comment period. The statute should be amended to add clarity that the Commission must release not only a set of final statewide maps, but also at least one earlier draft statewide map for public comment.
- Make clear that the requirement to post maps for comment and hold hearings on them applies only to draft maps, and not to the final maps adopted by the Commission and submitted to the Secretary of State for certification. This change would provide future commissions with more time on the "back end" by allowing them to make mapping changes during the last few weeks leading up the August 15 deadline for adopting maps, and would facilitate the release of multiple statewide draft maps that the public could comment on.
- Require draft statewide plans to be posted for a minimum of seven days of public comment, instead of a minimum of 14 days, during the final period leading up to the August 15 deadline. This change would facilitate the ability of future commissions to post statewide draft plans during the final weeks prior to the August 15 deadline.

IX. The statutory language regarding the selection of the final six Commissioners should not be amended to remove the racial and ethnic diversity requirement.

Government Code § 8252(g) lays out the last step of the Commission selection process. This step is important because it requires that the final six Commissioners are chosen based on diversity and other considerations to balance the representation of the racial, ethnic, gender and geographic diversity of the first eight randomly chosen Commissioners.

Racial and ethnic diversity in California is as important as geographic diversity, partisan diversity and gender diversity and therefore should be considered as important in the makeup of the Commission. The Commission benefits from its racial and ethnic diversity.

Californians voted for Proposition 11 expecting a diverse commission that reflects ALL the diversity that is California. A diverse commission also facilitates engagement from a diverse public and helps engender trust in the process.

X. Childcare and care for other dependents should be added as an allowable personal expense for Commissioners.

Finally, we want to respond to your question regarding childcare as an allowable personal expense. We believe that the special nature of the work of the Commission (the intensity, time required and travel demands) does put an unusual burden on individual Commissioners with young children or other dependents, such as elderly parents. We believe that reimbursing for childcare and care of such dependents will help ease that burden, as well as help ensure a diverse and qualified Commission.

Thank you again for the opportunity to be a part of this process. We look forward to following it closely and, as appropriate, providing more feedback down the road as the Commission finalizes its recommendations.

Sincerely,

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California Citizens Redistricting Commission

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Vincent P. Barabba: Redistricting commission did its job and followed the law

By Vincent P. Barabba
Posted: 01/08/2012 12:00:00 AM PST
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ON Aug. 15, I had the privilege of submitting to the California secretary of state, on behalf of my fellow California Citizen Redistricting Commission members, the new maps for elections throughout the next decade.

Thanks to voter-approved initiatives, this was the first time in California history that legislative, congressional and Board of Equalization districts were drawn by an independent, nonpartisan commission.

Historically, redistricting was the purview of the Legislature, whose members primarily saw the job as an incumbent protection and preservation plan. Many believe the resulting gerrymandered districts maintained the dysfunctional status quo, putting the politicians' self-interests above the people.

Now there are some misperceptions of the commission's work fueled by a slanted piece by the nonprofit investigative journalism organization ProPublica that appeared in this newspaper. The thrust of the article is that California congressional Democrats organized a stealth campaign to influence us.

I know it may be hard for some to believe, but the commission was well aware that incumbent politicians would try to circumvent an open and transparent process to benefit their own interests. The problem is that ProPublica went beyond revealing an alleged scheme and concluded that the Democrats successfully gamed the system and influenced an unwary commission's final district maps.

Nothing could be further from the truth.

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We drew district maps that were fair and representative without regard to political parties, incumbents or potential candidates. Our process was the antithesis to the backroom deals of the past.

All of the commission's discussions and deliberations had to be done in the light of day in public meetings that were live streamed. The videos and transcripts are archived on the commission's website. We held an unprecedented 34 public meetings across the state, hearing from more than 2,700 speakers and receiving an additional 20,000 comments in writing.

We carefully weighed the community testimony as a whole and followed the U.S. and California Constitutions, the Federal Voting Rights Act and the Voters First Act (Propositions 11 and 20). The California Constitution's criteria included drawing districts that were contiguous, compact where practicable and keeping counties, cities and communities of interest whole where practicable.

Some have criticized the commissioners as "amateurs." Indeed, ProPublica was misleading in its descriptions of commissioners. For example, it described one simply as a "homemaker." In this case the "homemaker" had been a strategic planner and organizational consultant for nonprofits and had conducted much of her work throughout the San Joaquin Valley. The public specifically didn't want the kind of professional, self-interested politicians who drew the lines in the past.

The 14-member commission is a diverse group of highly educated and experienced individuals including small-business owners, educators, former city council members, a former mayor, lawyers, consultants, an urban planner, an architect - and myself, a former director of the U.S. Census Bureau.

Were we successful? Well, the proof is in the pudding.

As many as 60 districts are now without an incumbent, and some districts have incumbents running against

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each other. A California Field Poll in September showed that voters familiar with the commission's work overwhelmingly approved of the new districts.

In October the state Supreme Court unanimously dismissed litigation brought by partisans. The court found that the commission did its job and followed the law.

The voters' experiment with redistricting reform proves that an engaged and enlightened electorate can make a difference. It is my hope that the commission's work will go a long way in restoring the hope and confidence of the people of California and will serve as a model for other states.

Vincent P. Barabba, a Republican member of the Citizen Redistricting Commission, is former director of the U.S. Census Bureau. He originally wrote this piece for the San Jose Mercury News.

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Redistricting Commissioners

By Redistricting CA on December 20, 2011

Posted on Tuesday, December 20th, 2011 at 4:25 pm

Californians of the Year: Redistricting Commissioners <http://www.foxandhoundsdaily.com/2011/12/californians-of-the-year-redistricting-commissioners/>

By John Wildermuth <http://www.foxandhoundsdaily.com/author/JohnWildermuth/>

Journalist and Political Commentator

Tuesday, December 20th, 2011

With partisan gridlock bogging down both Sacramento and Washington, it's easy to wonder whether Democrats and Republicans can ever get together, look beyond what's best for their parties and make the tough decisions they were hired to make.

Well, there's one state body that's shown multi-partisan, good government agreements still are possible and that's why the 14 members of the California Citizens Redistricting Commission are my choice for Californians of the Year.

When voters passed Prop. 11 in 2008, they meant to change the ultra-partisan way the state redraws its political boundaries after every Census. For decades, the majority party had run the redistricting process, drawing lines behind closed doors to reward their friends and punish their enemies. In the words of former GOP Gov. Arnold Schwarzenegger, who pushed the reform plan, "We need a system where voters choose the politicians, not where politicians choose the voters."

Pundits predicted disaster at every turn, from the Rube Goldberg-like method that the members were chosen to the required multi-partisan makeup of the commission and the need for a very specific supermajority to approve the new maps for state Senate, Assembly, Board of Equalization and (thanks to 2010's Prop. 20) Congress.

But it worked. Between January and July, the commission held dozens of meetings across the state, not only in the usual places like Sacramento, San Francisco and Los Angeles, but in cities like Norco, Hanford, Oxnard and Redding, which are typically little more than names on the map to most state commissions. And then, after coming out with proposed maps, the commission went back on the road to hear the inevitable complaints about their

artwork, then used those comments to design their final maps.

By law, the committee was composed of five Democrats, five Republicans and four decline-to-state or minor party voters. Maps could only be approved with at least three votes from each of those groups.

No problem. The final vote on the maps was 12-2 for the congressional map and 13-1 for all the others. Not surprisingly, there were plenty of complaints about the final outcome. Republicans want a referendum to overturn the state Senate maps and plenty of local communities – and politicians – are unhappy with where the new lines fall.

But no decision was ever going to satisfy everyone and even the redistricting losers know they at least had a chance to make their arguments, something that never happened when the politicians were running the show.

The commission members promised transparency in their operations, a wide-ranging effort to let the people of the state be heard and then an honest attempt to look beyond party lines and follow the redistricting guidelines set by California's voters, regardless of any political fallout.

They did what they promised and they did it on time. A state program that worked as advertised? Make those commissioners Californians of the Year.



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